IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

MOHAN LAL VS. STATE OF RAJASTHAN.

S.B.CRIMINAL APPEAL NO.251/2007
Section 374(2) Cr.P.C. against the Judgment dated 29.9.2006 in Cr.Misc. Case No.179/06(Sessions case No.40/2005) passed by Sh. Baldevpuri Goswami,RHJS, Special Judge N.D.PS.Cases, Jodhpur.

DATE OF JUDGMENT : May 0 7th, 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. M.L.Bishnoi, counsel for the appellant.
Mr.JPS Choudhary,Public .Prosecutor

BY THE COURT:

1. This appeal is directed against the judgment and order dated 29.9.2006 passed by the Special Judge N.D.P.S.cases,Jodhpur, whereby the learned Judge by the judgment whereby he confiscated the vehicle No.GJ-07-U-8320.

The brief facts of this appeal which are necessary to dispose of this appeal, in nut shell, are as follows.

2. While disposing of Sessions Case No.40/05 dated 12.6.06(State vs Madu Devi) it was ordered to initiate proceedings under Sections 60- 63 NDPS Act. Madu Devi was acquitted for the offence under Section 8/15, read with Section 29 of the NDPS Act but ordered to confiscate the vehicle truck No.GJ-07U-8320.

3. While deciding Original Sessions case No.52/97 (State vs Sujana Ram) which was decided on 15.12.98,which was decided by predecessor Presiding Officer of Court who observed that that 'Doda-posth' were scattered in the truck which was brought by the accused and placed at different places, were not established by the prosecution and truck was confiscated. Hence, this appeal.

4. Heard learned counsel for the appellant and learned Public Prosecutor and perused the record of the case.

5. Learned counsel for the appellant states that vehicle Truck GJ-07-U-8320 has been confiscated ,though, there was not evidence for transportation of the contraband article by the said vehicle and as per provisions of Sections 60 and 63 of the NDPS Act, before confiscation of the vehicle, owner of the vehicle should be given an opportunity of hearing but in this case no such notice or an opportunity of hearing was given,and, thus the procedure of

the said Act has not been followed before ordering the confiscation of the vehicle in question, as held by this Court in case of **Kilash & others vs State of Rajasthan 2006(1) Cr.L.R. (Raj.)320,** so order of confiscation of vehicle should be quashed and set aside and case should be remanded to decide the matter afresh after giving opportunity of hearing.

6. After going through the contention of the learned counsel for the appellant and facts of the case which revealed that the appellant has not given opportunity of hearing before confiscation of the said vehicle, therefore, impugned order of confiscation of vehicle Truck No. GJ-07-U-8320 is quashed and set aside and the matter is remanded to the trial Court to decide the matter afresh after affording an opportunity of hearing to the appellant and after following the due procedure of law, as envisaged under Sections 60 and 63 of the NDPS Act,1985.

7. Accordingly, the appeal is allowed to the extent as stated here-in-above.

(**CHATRA RAM JAT)J.**

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